



**DEVELOPMENT
SERVICES
DEPARTMENT**

The City of Morgantown

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July 18, 2013

Otto Properties, LLC
c/o Lisa Mardis
Project Management Services
160 Fayette Street
Morgantown, WV 26505

**RE: V13-25 / Otto Properties, LLC / 510 Burroughs Street
Tax Map 55, Parcel 37**

Dear Ms. Mardis,

This letter is to notify you of the decision made by the Board of Zoning Appeals concerning the above referenced variance petition for variance relief from Article 1365.09(B) as it relates to setbacks at 510 Burroughs Street.

The decision is as follows:

Board of Zoning Appeals, July 17, 2013:

1. Each of the Findings of Fact was found in the positive as stated in Addendum A of this letter.
2. The Board granted a 1' -3" to 1' -6" variance from the former Article 1365.09(B)(4)(d) standard so that the curb and landscape area may remain as developed and the matter resolved accordingly.

These decisions may be appealed to the Circuit Court of Monongalia County within thirty (30) days. Any work done relating to decisions rendered by the Board of Zoning Appeals during this thirty-day period is at the sole financial risk of the petitioner.

The above referenced approvals are set to expire in twelve (12) months unless you can demonstrate that they have been activated as evidenced by permits, construction, or required licenses. This expiration deadline may be extended to eighteen (18) months upon prior written request of the Board. Please note that building permits must be obtained prior to the commencement of work for which variance relief was granted herein.

Should you have any questions or require further clarification, please contact the undersigned. We look forward to serving your plans review and permitting needs.

Respectfully,

Stacy Hollar
Executive Secretary
shollar@cityofmorgantownwv.gov

ADDENDUM A – Approved Findings of Fact

V13-25 / Otto Properties, LLC / 510 Burroughs Street

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The property owners were made aware of this deficiency only after a complaint was filed by an outside source against Otto Properties, LLC, long after the aforementioned owners received a Letter of Compliance for the two rental units and two Certificate of Occupancies (one for the building and related parking, and one for *The Wine Bar at Vintner Valley*). The development was previously approved with a three (3) foot to 0 landscape area running along the eastern side of the structure.

To further exaggerate the exceptional or extraordinary circumstance, this particular code has historically been overlooked, leaving a string of non-conforming code violations. Being led to believe that the development met all applicable zoning codes, as evidenced by Certificate of Occupancies, Otto Properties, LLC has attempted to remedy said violation and to meet the spirit and intent of the Planning and Zoning Code, by placing a barrier, or landscaped island, next to the building ranging from 3'6" to 3'9" (as measured by the Planning Division). The applicant humbly requests a variance from ~~4'1" to 4'4"~~ 1'-3" to 1'-6" running and exceeding the length of the side of the structure to maintain the existing curb and landscaping area that has been developed. The owners fear that encroaching into this distance further would interfere with the pedestrian way leading to the entrance at the front of the building, not to mention that it appears it would restrict the State approved ingress/egress location.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

It appears that majority, if not all development since the adoption of the Planning and Zoning Ordinance in ~~2005~~ 2006 has not been made to comply with related code. Furthermore, it appears that this requirement would eliminate drive-thrus. Examples of properties or uses that possess same (approved since ordinance adoption in ~~2005~~ 2006) include, but are not limited to Giant Eagle Pharmacy drive thru on Greenbag Road, Mud Suckers Car Wash on Brockway Avenue, McDonald's on University Avenue, Morgantown AES Credit Union on Van Voorhis Road.

Finding of Fact No. 3 – The granting of this variance not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

It appears that granting variance relief for the subject site as requested may serve to mitigate potential harm to patrons utilizing the pedestrian pathway/area to gain access to the commercial establishment's entrance at the front of the building.